(1) C.S.1001 — (3)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH

AT BILASPUR

WRIT PETITION NO.2484/2004

PETITIONER : Gajendra Singh Sahu
S/O Jalam Singh,
Aged 53 years,
Assistant Teacher, Primary
School - Panduka,
Block - Chhura, Distt. Raipur
(C.G.)

R. R. No. 2480/04
Presented by Shri Vivek Pathak
dated 10-8-04

VERSUS

RESPONDENTS : 1) State of Chhattisgarh
Through : Secretary
Ministry of SC/ST, Development
Department, D.K.S. Bhawan,
Raipur (C.G.)

2) Collector,
Raipur (C.G.)

3) Rana Pratap Singh,
Assistant Teacher
Primary School, Gopalpur
Block - Mainpur,
Distt. Raipur (C.G.)

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2484 of 2004

Petitioner Gajendra Singh Sahu

Versus

Respondents State of Chhattisgarh & others

Post for order on 15th June, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2484 of 2004

Petitioner Gajendra Singh Sahu

Versus

Respondents State of Chhattisgarh & others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri Y. C. Sharma, *Advocate for the petitioner.*

Shri V. V. S. Moorthy, Deputy Advocate General with Shri I. N. Shrivastava, Panel lawyer for the respondents No. 1 and 2.

Shri Ajit Singh, Advocate for the respondent No.3.

ORDER

(15th June, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. In the present petition, the petitioner assails the transfer order dated 31.7.2004 (Annexure P/1) whereby the petitioner, who was working as Assistant Teacher, was transferred from primary school Panduka, block- Chhura to the primary school Gopalpur, block-Mainpur, on the ground that the impugned transfer order was passed in malafide exercise of power on the part of the respondents No. 1 and 2.

2. Shri Y. C. Sharma, learned counsel appearing for the petitioner submits that the impugned transfer order was passed on the basis of a complaint made by one Dharmendra Sahu. Shri Dharmendra Sahu wanted to sell some timber wood to the petitioner and since the petitioner refused to purchase said timber from Shri Dharmendra Sahu, a false complaint was lodged against the petitioner. It was further stated that the petitioner happened to have very good relations with the former Congress Chief Minister. The said Shri Dharmendra Sahu had further lodged a F.I.R. against the petitioner and one Shri

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Vikramaditya Sahu for commission of the offences under the provisions of Section 294, 323, 506-B read with 34 of the Indian Penal Code, on 21.7.2004.

3. Learned counsel for the petitioner, on the basis of the above stated allegations submitted that the impugned transfer order is vitiated on account of malafide exercise of powers by the respondents No. 1 and 2.

4. Shri V. V. S. Moorthy, learned Deputy Advocate General with Shri I. N. Shrivastava, learned Panel lawyer, appearing on behalf of the respondents No. 1 and 2, on the contrary, categorically denied the above stated allegations and the submission that the order of transfer was passed in exercise of powers malafide. It was submitted that the petitioner was working as Assistant Teacher in primary school Panduka for the last more than 19 years. The petitioner indulged in political activities, as is evident from the complaint made by Sarpanch, Gram Panchayat Panduka. A proper enquiry was conducted on the complaint dated 9.7.2004 of Sarpanch by the Block Development Officer. The Block Development Officer in the enquiry, came to the conclusion that the petitioner indulged in the political activities openly and misbehaved with other employees of the school. The said report was submitted to the Assistant Commissioner, Tribal Welfare Department, Raipur on 22.9.2004. The petitioner was transferred in public interest and due to the administrative exigencies, keeping in view the unwarranted activities of the petitioner.

5. Having heard learned counsel for the parties and perusing the records appended to the petition and documents filed by the respondents, it is clearly established that the impugned transfer order was passed not on the basis of the complaints made by one Shri Dharmendra Sahu

but on the basis of the complaints made by Sarpanch, which was properly enquired into and the respondents having been satisfied with the enquiry report, transferred the petitioner from primary school Panduka, Block Chhura, District- Raipur to Primary School Gopalpur, Block-Mainpur, District Raipur. The challenge of the petitioner is not on any other ground, except on the ground of malafide exercise of powers, which the petitioner has failed to establish.

6. It is well settled principle of law that in the case of transfer, on the basis of the conduct of the petitioner, no notice is necessary, as has been observed by the Supreme Court in the case of **Union of India and others Vs. Janardhan Debanath and another** { (2004) 4 S.C.C. 245 } in para 14, which is quoted herein below:

> "14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

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7. The Supreme Court in the case of **State of U.P. and another Vs. Siya Ram and another** {(2004) 7 S.C.C. 405) has observed as under:

> ".....No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan."

8. The Supreme Court in the case of **Rajendra Roy Vs. Union of India and another** (AIR 1993 S C, 1236), has observed as under :

> ".....It may not be always possible to establish malice in fact in a straight-cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions....."

9. For the discussions made hereinabove, this petition deserves to be and is dismissed. In the facts of the case, no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur